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Letter dated 25 May 2006 from the Deputy Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council

I have the honour to transmit herewith a letter from B. Donovan Picard, Legal Counsel to Ethiopia, addressed to Professor Sir Elihu Lauterpacht, President of the Eritrea-Ethiopia Boundary Commission (see annex).*

I should be grateful if the text of the letter could be circulated as a document of the Security Council.

(*Signed*) Negash **Kebret**
Ambassador
Deputy Permanent Representative

* The annex is reproduced in the language of submission only.

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Annex to the letter dated 25 May 2006 from the Deputy Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council

I am writing with respect to Eritrea's letter of May 22, 2006, and the Commission's request that Ethiopia provide a provisional security plan based on the assumption that Eritrea would accept the Commission's instruction to fully and immediately restore UNMEE's freedom of operations and restore the integrity of the TSZ, pursuant to the Algiers Agreements and United Nations Security Council Resolution 1640.

It was with great disappointment that Ethiopia read Eritrea's letter of May 22. In its letter, Eritrea once again rejected the Commission's instructions, while misrepresenting Ethiopia's actions toward the Commission in a disingenuous attempt to shift focus from its own unlawful and intransigent behavior. Consequently, the request of the Commission to provide a provisional security plan based on the assumption that Eritrea would comply with the Commission's instructions is untenable because Eritrea has made clear that it has no intention of fully restoring UNMEE's freedom of movement and/or the integrity of the TSZ.

Commission Instructions; Eritrea's Obligations

The Commission's instructions to Eritrea were to fully and immediately restore UNMEE's freedom of operation. These instructions are consistent with the Algiers Agreements,[1] United Nations Security Council resolutions,[2] and statements by the Secretary General[3] and the Witnesses.[4]

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[1] In Article 1 of the Cessation of Hostilities Agreement, the parties agree to the "guarantee of the free movement and access of the Peacekeeping Mission . . ." And in Article 2 of that agreement, the parties define the mandate of the Peacekeeping Mission to include, inter alia, "monitor[ing] the temporary security zone provided for in paragraph 12 of this document."

Eritrea's Practical Barriers to Demarcation Activities

Not only is Eritrea obligated under the Algiers Agreements and Security Council resolutions to fully and immediately restore UNMEE's freedom of movement and the integrity of the TSZ, anything less than a full restoration makes demarcation impossible as a practical matter. This point has been repeatedly made clear in the last two EEBC meetings. In the meeting of March 10, 2006, Ambassador Legwaila stated:

> As the witnesses and the Security Council said, if you were to ask me to help you today, I would not be able to do so. I would not be able to do so because I have no helicopters and my people are scattered all over the place and as I say, we withdrew from 18 team sites [within the TSZ]. In other words, you will have to restore UNMEE to what it was before these restrictions and hopefully that is what will happen because otherwise we will be useless to the Boundary Commission as we are now to the Parties. Right now we are useless to the Parties.

At the last EEBC meeting of May 17, the Commission requested the views of the UN, UNMEE, and the Commission's own staff regarding the support that was needed from UNMEE in order for demarcation to take place. All stated forcefully and unequivocally that demarcation could not be supported by UNMEE without the integrity of the TSZ being completely restored and UNMEE being given full freedom of movement. This included restoring UNMEE forces back to Eritrea and rebuilding all 18 sites within the TSZ, which have been taken over by Eritrean troops. It was their expressed opinion that without fully restoring all of UNMEE's capacity and freedom of movement and the integrity of the TSZ, no demarcation work could be

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[2] For example, the UN Security Council Presidential Statement (S/PRST/2006/10) of February 24, 2006, provides The Security Council demands that the parties permit UNMEE to perform its duties without restrictions and provide UNMEE with the necessary access, assistance, support and protection required for the performance of these duties, including its mandated task to assist the EEBC in the expeditious and orderly implementation of the Delimitation Decision, in accordance with Security Council resolutions 1430 (2002) and 1466 (2003). (emphasis added)

[3] As the Secretary General, at paragraph 33 of his Report to the Security Council of March 6, 2006, emphasized: "For the current initiative to proceed, all restrictions of UNMEE operations must be lifted." (emphasis added)

[4] In their meeting of 22 February 2006, the Witnesses to the Algiers Agreements issued a Statement providing that: "The Witnesses urge the parties to permit UNMEE to perform its duties without any restrictions and call on the parties to ensure the free movement of UNMEE personnel in the performance of their responsibilities . . . In particular, the Witnesses note that demarcation of the border cannot proceed unless UNMEE is allowed full freedom of movement throughout its area of operations. (emphasis added)7

done. It was further noted that UNMEE at its present, reduced capacity was ill-equipped to support the demarcation and that if UNMEE were to be reduced to an observer mission, it would simply be impossible for UNMEE to assist in the demarcation. Moreover, it was also stated by the Commission's Chief Surveyor that no contracts related to the demarcation could be signed until UNMEE is fully restored.

Eritrea Has Refused to Honor Commission Instructions

Nowhere in Eritrea's letter does it state that it will restore UNMEE's full freedom of movement and the integrity of the TSZ and remove restrictions--either now or ever. Indeed, one can only infer from the letter that Eritrea has refused to do so. Rather, at most, what Eritrea offers is to allow UNMEE some undefined, limited action at some future point when Eritrea determines that Ethiopia has satisfied Eritrea's demands. Consequently, Eritrea has created a barrier to the demarcation, which until removed prevents any further progress. The Commission cannot accept Eritrea's position without rejecting the unanimous views of UNMEE, the UN, and its own expert staff.

Eritrea Is in Breach of Its Treaty Obligations

Moreover, Eritrea does not have the right to unilaterally redefine its most fundamental treaty obligations under the Algiers Agreements, which clearly require it not to deploy military forces within the TSZ, to refrain from the threat or use of force, and to guarantee UNMEE full freedom of movement.[5] Yet this is precisely what Eritrea has done by asserting that it will dictate what UNMEE can and cannot do and the timing of its actions.

Ethiopia Has Complied with Commission Instructions

Ethiopia also takes exception to Eritrea's misrepresentation of Ethiopia's actions toward the Commission. Unlike Eritrea, Ethiopia sent senior government officials to attend the two meetings recently called for by the EEBC and participated in good faith. Also, unlike Eritrea, Ethiopia agreed to the appointment of General Fulford. Ethiopia agreed to the Commission's requested payment to cover its work, and this is presently being sent. Ethiopia appointed field liaison officers at the Commission's request. Ethiopia has expressed its eagerness to submit a security plan for demarcation immediately upon Eritrea restoring UNMEE and the TSZ so as to

[5] See Cessation of Hostilities Agreement, Articles 1, 2 and 12, as quoted in footnotes 1 and 2 above.

make a security plan possible. And Ethiopia has and will continue to honor UNMEE's full freedom of movement and the integrity of the TSZ.

Ethiopia therefore rejects Eritrea's assertion that "Ethiopia, alone" is responsible for the present delays and the associated expenses of UNMEE. It is Eritrea that has raised physical barriers to demarcation and in its May 22 letter has refused to remove them. The Commission is also aware that the costs associated with the peacekeeping mission, the Boundary Commission, and all of the loss and suffering on both sides of the boundary resulted from Eritrea's invasion of Ethiopia in violation of international law.

Ethiopia is committed to the peaceful settlement of all disputes with Eritrea in accordance with the United Nations Charter and the Algiers Agreements. Ethiopia reiterates its full support for the new initiative by the Witnesses and has demonstrated its willingness to cooperate with the Boundary Commission in this endeavor.

Yours sincerely,

B. Donovan Picard
Legal Counsel to Ethiopia